NO. COA06-54

NORTH CAROLINA COURT OF APPEALS

Filed: 5 December 2006

IN THE MATTER OF:

M.G. and Y.G., Minor Children.	Alamance County No. 03 J 270 03 J 271

Appeal by mother from judgment entered 11 July 2005 by Judge Bradley R. Allen, Sr. in Alamance County District Court. Heard in the Court of Appeals 23 August 2006.

Jamie L. Hamlett for petitioner-appellee Alamance County Department of Social Services.

Peter Wood for respondent-appellant mother.

Susan L. Dunathan as guardian ad litem.

ELMORE, Judge.

This appeal arises from the district court's decision to terminate respondent mother's (respondent) parental rights to her son (M.G.) and to her younger daughter (Y.G.). After careful review, we affirm the order of the district court.

The minor son M.G. was born in 1999, and the minor daughter Y.G. was born in 2003. On 5 November 2003, the Burlington police responded to a report of child abuse at the apartment where respondent lived. Upon arriving at the home, police found M.G., who was four-years-old at the time, covered in over sixty-five U-shaped bruises on his body scattered from his neck to his legs.

The police also found blood on the bed sheets and an electrical cord with a shape similar to the shape of the bruises on M.G. When the police arrived at the apartment, respondent, M.G. and Y.G. were present at the home. The Alamance County Department of Social Services (ACDSS) received a subsequent report.

Respondent admits to having physically beaten M.G. on multiple occasions. For instance, she pled guilty to criminal charges stemming from the 5 November 2003 incident and served a term of sixteen to thirty-three months in the North Carolina Women's Correctional Institute. Additionally, respondent admitted to having hit M.G. in the mouth with a shoe while living at a domestic violence shelter, an incident that led to a previous report to ACDSS on 8 August 2003. In total, prior to the instance of abuse on 5 November 2003, ACDSS had received four reports of respondent inappropriately disciplining her children.

During the trial court proceedings, Ginger Furmage, the foster care worker assigned to manage M.G. and Y.G.'s welfare, testified as to respondent's behavior after the 5 November abuse incident. Ms. Furmage testified that after ACDSS took the children into custody, respondent maintained inconsistent contact with the case workers. According to the record, respondent did contact ACDSS through April 2004, but then ceased communication until December 2004. Thus, despite knowing how to reach ACDSS and being able to do so from the prison where she was incarcerated, respondent had no contact with the organization regarding either of her children for seven months.

Ms. Furmage also testified about respondent's attitude, both towards ACDSS and towards her abuse of M.G. According to Ms. Furmage, respondent questioned why M.G. needed counseling after the abuse and blamed ACDSS for being separated from her children. At the hearing for termination of her parental rights, respondent herself testified that she was not aware of the seriousness of the injuries she inflicted upon her son, despite the fact that she caused sixty-five bruises on his body and had drawn blood.

ACDSS recommended that respondent undergo psychological evaluation to assess her parenting skills and abilities, as well as her psychological well-being. Dr. Maria Lapetina, the licensed psychologist who assessed respondent, found troubling information from her evaluation. Dr. Lapetina observed and interviewed respondent, as well as administered three evaluation instruments. Because respondent assigns error to the trial court's findings of fact regarding the results of Dr. Lapetina's evaluation, including her use of the three instruments, we will address the details of the evaluation later in this opinion. In brief, Dr. Lapetina concluded that the risk of re-abuse by respondent is very high.

M.G. and Y.G. have lived with their current foster family since March 2004. The uncontroverted testimony is that, since living with his foster parents, M.G.'s anxiety and hyperactivity have decreased. Additionally, M.G.'s school performance has improved.

Two distinct phases comprise a proceeding for the termination of parental rights: an adjudicatory stage and a dispositional

stage. *In Re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). At the adjudicatory stage, a trial court may terminate rights if it finds one or more of the statutory grounds for termination are supported by clear and convincing evidence. *Id.*; *see* N.C. Gen. Stat. § 7B-1111(a) (2003) (abuse and/or neglect included as statutory grounds for termination of parental rights). When a respondent challenges the sufficiency of the evidence relied upon by the trial court in terminating the respondent's parental rights, the standard of review is well-established:

> When reviewing an appeal from an order terminating parental rights, our standard of review is whether: (1) there is clear, cogent, and convincing evidence to support the district court's findings of fact; and (2) the findings of fact support the conclusions of law. Clear, cogent, and convincing evidence is greater than the preponderance of the evidence standard required in most civil cases, but not as stringent as the requirement of proof beyond a reasonable doubt required in criminal cases. If the decision is supported by such evidence, the district court's findings are binding on appeal even if there is evidence to the contrary.

In re A.D.L., 169 N.C. App. 701, 710, 612 S.E.2d 639, 645 (2005) (internal citations and quotations omitted).

Once the trial court finds at least one ground for terminating parental rights supported by clear, cogent and convincing evidence, the trial court moves to the dispositional phase. *Blackburn*, 142 N.C. App. at 610, 543 S.E.2d at 908. "[At this phase], the court shall issue an order terminating the parental rights unless it further determines that the best interests of the child require otherwise." *Id.*; *see* N.C. Gen. Stat. § 7B-1110(a) (2003). The

appellate standard of review for the dispositional stage of the trial court proceedings is abuse of discretion. *In Re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002).

As a preliminary matter, respondent contends that the trial court erred by finding ten particular items of fact relating to the results of Dr. Lapetina's evaluation of respondent. Respondent contends that there was insufficient evidence to support the following facts: (1) Respondent's prognosis is poor since she lacks understanding of childcare and child development; (2) Dr. Lapetina administered three instruments to evaluate respondent; (3) Respondent scored in the 99th percentile on the child abuse potential instrument; (4) Respondent scored high on the parenting stress index, which indicates she perceives M.G. as difficult to parent; (5) Respondent suffers from severe explosive anger; (6) Respondent cannot control her anger and is not sensitive to her children's needs; (7) Respondent indicates a poor self-image and does not understand her responsibility in her relationship with M.G.; (8) Respondent's responses and unaffected attitude indicate she is not attached to her children; (9) Respondent's responses on the incomplete sentence instrument reveal that she has no insight as to the pain she inflicted on M.G. and does not understand the need to change herself; and (10) Respondent suffers from lack of impulse control and ability to bond with her children.

This assignment of error is without merit. Essentially, respondent argues that the trial court unflinchingly accepted Dr. Lapetina's methodology relating to the three instruments

administered. In North Carolina:

> A party believing the methodology used by a witness is not valid or, if valid, is not properly applied to the facts at issue, has an obligation to object to its admission. If a timely objection is not lodged at trial, it cannot be argued on appeal that the trial court erred in relying on this evidence . . .
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Walter v. Walter, 149 N.C. App. 723, 733, 561 S.E.2d 571, 578 (2002) (citations omitted); *see also* N.C.R. App. P. 10(b)(1) (2005) ("In order to preserve a question for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling the party desired the court to make . . . ."). Yet respondent concedes that no party objected to Dr. Lupetina being tendered as an expert in the field of psychology and psychological evaluations. Additionally, the record contains no objection to the methodology that Dr. Lupetina employed. Because respondent did not object to the methodology at trial, the trial court rightly considered Dr. Lapetina's testimony about the results of the instruments as persuasive evidence on which to base its findings of fact. Any additional concerns about Dr. Lapetina's testimony go to the weight the trial court should have given the evidence. *See Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440, 461, 597 S.E.2d 674, 688 (2004) (holding that once a court determines scientific area of qualified expert is reliable, then remaining issues concerning quality of conclusions go to the weight of the evidence rather than admissibility).

In weighing the evidence, the trial court in this case had clear, cogent and convincing evidence to support the fact that respondent's "prognosis is very poor" and her risk of abusing the children in the future is high. Dr. Lapetina, a psychologist who has practiced in North Carolina for twenty-one years, testified extensively as to the various instruments used to evaluate respondent's parenting skills and psychological state. Additionally, Dr. Lapetina based her opinions not only on the results of the three instruments administered, but also on her interview of respondent, on her observations of respondent's behavior during the interviews, and on the records she received from the Department of Social Services. Based on her evaluation, she testified that respondent suffered from anger, depression, isolation, and inappropriate reaction to her children's needs. Such testimony provides clear, cogent and convincing evidence to support the findings of fact relating to the strong probability of future abuse by respondent.

Respondent also assigns errors to the trial court's findings of fact collectively related to respondent's inability and/or unwillingness to address the issues which led to the removal of the children. At a termination proceeding, the trial court must consider evidence of the history of neglect or abuse by the parent, as well as any change in the circumstances that might bode well for the parent-child relationship. *In Re Shermer*, 156 N.C. App. 281, 286, 576 S.E.2d 403, 407 (2003). In considering changed circumstances, the court looks for positive response which improves

the situation. "Implicit in the meaning of positive response is that not only must positive efforts be made towards improving the situation, but that *these efforts are obtaining or have obtained positive results*." *In Re Nolen*, 117 N.C. App. 693, 700, 453 S.E.2d 200, 225 (1995) (emphasis added).

The evidence on the record is mixed as to respondent's willingness and ability to change her abusive behavior. For example, respondent demonstrated a willingness to attend stress and anger management classes while in prison. Additionally, respondent complied with her case plan by attending parenting classes, taking English classes, and undergoing mental health evaluations. Nevertheless, strong evidence exists that these efforts had not obtained "positive results" towards improving the situation. To begin with, Ms. Furmage indicated that respondent often blamed ACDSS for her children being in foster care. Respondent also questioned why M.G. received counseling after the abuse, even though social workers explained the boy's need for therapy. Based on the mental evaluation of respondent, Dr. Lapetina expressed serious doubt as to whether respondent would be able to implement the classes into her daily routine with the children. Indeed, respondent does not contest the fact that she refused services from ACDSS on previous occasions. Additionally, Ms. Furmage testified that while in prison respondent did not contact ACDSS about the children for seven months, despite having the option of calling collect and having interpreter services available. Finally, even at trial, respondent insisted that ACDSS had never offered her

parenting classes or other assistance beyond offering her money to leave North Carolina permanently.

Such evidence is clear, cogent and convincing to support the findings of fact that (1) Respondent is in denial about the extent and gravity of the abuse and neglect she inflicted; (2) Respondent's behavior is indicative of an inability/unwillingness to address issues that led to the children's removal; (3) Respondent did not contact ACDSS for seven months, despite having access to collect calling and interpreter services; and (4) Respondent did not make reasonable efforts to work towards resolving the issues which led to the children being taken from her. Because clear, cogent and convincing evidence supports these findings of fact, they are binding upon appeal, even though some evidence exists to the contrary. *See In re A.D.L.*, 169 N.C. App. at 710, 612 S.E.2d at 645.

Clear, cogent and convincing evidence also supports the findings of fact that: (1) Respondent cannot currently provide for the care of the juveniles because of her incarceration; and (2) Respondent cannot likely provide for her children in the future because she has no solid plans for her children's care upon her deportation to Mexico. Respondent's own testimony strongly supports these findings of fact, given her statement that she did not know where she would live upon deportation. Respondent told social workers that she did not want her sister in Mexico to adopt the children because her sister misspent money and abused M.G. previously; yet respondent could not provide a location for the

relative whom she preferred to adopt the children. An absence of even so much as an address at which the children would live strongly supports the facts relating to respondent's inability to provide for the children.

In our review of the adjudicatory stage we must address whether the trial court made sufficient findings of fact, supported by clear, cogent and convincing evidence, that one of the statutory grounds was met for the termination of respondent's parental rights. A court may terminate a parent's rights to his or her children if the parent of the juvenile has abused or neglected the juvenile. *See* N.C. Gen. Stat. § 7B-1111(a)(1) (2003). Additionally, to terminate a parent's rights on these grounds, the court must find that there is a probability of repetition of the offending conduct if the child returns to the parent. *In Re Pope*, 144 N.C. App. 32, 36-37, 547 S.E.2d 153, 156-57 (2001).

Respondent contends that the trial court made flawed conclusions of law regarding the status of the juveniles by not explicitly finding whether M.G. and Y.G. qualified as abused and/or neglected juveniles under the statute. In its findings, the trial court mimicked the language of the statute and stated: "the parent of the juvenile has abused or neglected the juvenile . . . ." Although a trial court must state a ground for termination of parental rights, typographical errors and errors of draftsmanship amount only to harmless error if the evidence strongly supports one of the grounds for termination. *See In Re Bluebird*, 105 N.C. App. 42, 51, 411 S.E.2d 820, 825 (1992). In this case, the presence of

"or" rather than "and" does not obviate the findings of fact that strongly support that M.G. was an "abused juvenile" and that Y.G. fell under North Carolina's definition of a "neglected juvenile."

Alone, the undisputed findings of fact in the record sufficiently support the conclusion of law that M.G. was an "abused juvenile" under the statute. *See* N.C. Gen. Stat. § 7B-101(1) (2003) (defining an "abused juvenile" as "a juvenile . . . whose parent . . . [i]nflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means."). As stated previously, respondent admitted to two instances of physically beating M.G., one of which was so severe as to send respondent to prison for felony child abuse. Moreover, at least four other recorded instances of abuse exist involving respondent and her son, including her own admission that she struck her son in the mouth with a shoe. Such instances certainly qualify as inflicting physical injury on the juvenile by other than accidental means.

The trial court's findings of fact also strongly support the conclusion of law that Y.G. is a "neglected juvenile." *See id.* § 7B-101(15) (2003) (defining a "neglected juvenile" as a juvenile "who lives in an environment injurious to the juvenile's welfare . . . ."). The North Carolina legislature has stated explicitly:

> In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile . . . has been subjected to abuse or neglect by an adult who regularly lives in the home.

Id. We have previously discussed respondent's abuse of M.G. while she, M.G. and Y.G. lived together. The trial court may use such evidence to determine the status of Y.G. *See id.* Moreover, the trial court found that Y.G. remained present in the apartment during the 5 November thrashing of M.G., indicating a potentially dangerous environment for Y.G. Respondent attempts to assign error to this finding of fact. However, such an attempt is without merit. When the police arrived at respondent's apartment, the mother and two children were all present at the house. Furthermore, respondent testified at trial that she began beating M.G. when she found him near Y.G., suggesting that Y.G. was present. Finally, no evidence exists in the record that contradicts the contention that Y.G. was present during the incident. Thus, clear, cogent and convincing evidence supports the finding of fact that Y.G. was present in the home during a violent incident of child abuse and that Y.G. was at risk of being harmed.

However, in determining whether the trial court erred in concluding that statutory grounds exist to terminate respondent's parental rights, we must inquire as to whether the findings of fact support the conclusion of law that there is a probability of repetition if the child is returned to the custody of the parent. *See In Re Pope*, 144 N.C. App. at 36-37, 547 S.E.2d at 156-57. Respondent contends that the trial court applied the wrong standard in determining whether she was likely to repeat her abusive parenting behavior. This argument, too, must fail. The substitute of the word "possibility" rather than "probability" is harmless

error when the trial court applied the correct statute and clear, cogent and convincing evidence supported the correct statutory standard. *See id.* at 38, 547 S.E.2d at 157.

A plethora of evidence exists on the record suggesting a high probability that respondent would be unable to appropriately respond to her children's behavior and would continue to abuse M.G. and neglect Y.G. in the future. As previously detailed, respondent abused M.G. on *repeated* occasions. Additionally, the court can use expert psychological testimony to find a parent incapable of improving the conditions that led to the child's removal from the home. *See In Re Allred*, 122 N.C. App. 561, 567-568, 471 S.E.2d 84, 87 (1996) (relying on a clinical psychologist's evaluations regarding a mother's inability to change her approach to child rearing to terminate parental rights). Dr. Lapetina's psychological evaluations put respondent in the ninety-ninth percentile of probability of abusing the juveniles in the future. Dr. Lapetina expressed concern that respondent, who suffered from severe explosive anger, would be unable to control her temper when the children behaved age-appropriately in the future. Finally, respondent suffered from a lack of parental attachment, depression, and an inability to read and understand the needs of the children. These psychological issues confirm that the likelihood of repetition of abuse was very high, and the trial court could rightly consider them in determining whether to terminate parental rights. Moreover, the fact that respondent failed to contact ACDSS for seven months regarding her children presents evidence of

respondent's detachment from her children. In combination, the evidence of respondent's prior abuse and neglect of her children, coupled with the psychologist's testimony about her likelihood of recidivism, provide clear, cogent and convincing evidence to support the findings of fact that the risk of repetition is high because her ability to change her parenting style is low.

Finally, respondent argues that the trial court abused its discretion by terminating the rights of respondent to the minor children. This argument fails because the findings of fact, supported by clear, cogent and convincing evidence, lead to the conclusion of law that "it is in the best interest of the minor children that the parental rights of [respondent] be terminated and that the children's custody . . . be continued with the Alamance County Department of Social Services."

The trial court found the following findings of fact, all of which are contested by respondent: (1) that a permanent plan for the children's care is necessary for the physical and mental well-being of the children, and that the permanent plan should begin with the termination of respondent's parental rights; (2) that the juveniles have reasonable prospects for adoption; and (3) that the plan of adoption is in the best interest of the juveniles. Despite respondent's arguments to the contrary, clear, cogent and convincing evidence supports all three findings of fact. For instance, respondent does not contest that the children are comfortable with their foster parents; that the foster parents have a proper home and the financial means to support the children

emotionally and developmentally; that the children refer to their foster parents as "mommy" and "poppy;" and that placement of the children with their uncle is not in the best interests of the children. Such uncontested evidence supports the findings of fact that the juveniles have reasonable prospects for adoption and that the adoption would be in the best interest of the children. Additionally, the children's foster parents' statement that they love the children and wish to adopt them, further supports the fact that the children have reasonable prospects for adoption.

Moreover, courts can consider evidence presented during the adjudicatory stage of the termination proceeding in determining what measures are in the best interest of the child. *In Re Blackburn*, 142 N.C. App. at 163, 543 S.E.2d at 910. As previously discussed, the evidence during the adjudicatory stage demonstrated that respondent had abused and neglected her children, thus allowing termination of respondent's parental rights. The evidence also showed respondent's anger and stress problems, her lack of progress in her parenting skills, and the strong likelihood that respondent would abuse her children in the future. Testimony, including that of respondent, showed that the trial court considered other placement options for M.G. and Y.G. However, evidence showed that such options might cause significant problems. Respondent's brother, who lives in North Carolina, told ACDSS that he could not care for the children. Moreover, the only located relative who could adopt Y.G. and M.G. had allegedly abused M.G. on a previous occasion; the locations of other relatives were unknown

both to respondent and to the case workers. This evidence supports the finding of fact that the best interest of the children require the termination of respondent's parental rights and the institution of adoption proceedings.

The trial court in this case did not abuse its discretion in terminating respondent's parental rights. This Court has previously held that a trial court did not abuse its discretion in factually similar cases. *See, e.g., In Re V.L.B.*, 168 N.C. App. 679, 686-87, 608 S.E.2d 787, 792 (2005). In *In Re V.L.B.*, we reviewed the trial court's determination that the best interest of the children in the case required the termination of the mother's rights. *Id.* In reviewing the decision for abuse of discretion, we held that the trial court did not abuse its discretion when it terminated the respondent's rights to her children after considering the children's positive response to foster care; the respondent's history of mental problems that interfered with her parenting, including anxiety, severe anger and depression; and the respondent's ability to understand and change the conditions that led to her children's removal. *Id.* Similarly, after considering M.G. and Y.G.'s positive response to foster care, Dr. Lapetina's evaluation of respondent's mental health, and respondent's testimony and behavior since the 5 November 2003 incident, the trial court concluded that the children's best interest would be served by terminating respondent's rights.

Affirmed.

Judges McGEE and BRYANT concur.

Report per Rule 30(e).